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Ontario Labour Relations Board HIGHLIGHTS

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The Board mourns the sudden passing of Wayne Davis, who died on Thursday, October 5, 2006 after a brief illness. Wayne was with the Board for more than 20 years as a Labour Relations Officer/Specialist until his retirement in December 2004. He exemplified the professionalism and dedication of the Board's field staff as an excellent mediator who garnered great respect amongst his colleagues and the labour and employment community. He was also a proud and dedicated family man.

Vice-Chair Appointment

The Board is pleased to announce the appointment of **Mark J. Lewis** as a full-time Vice-Chair. Mark has practised labour law in both the private sector and as in-house counsel with a major trade union. He was called to the bar of Ontario in 1991 and over the ensuing fifteen years developed an expertise in construction labour relations.

Scope Notes

The following are scope notes of some of the decisions issued by the Ontario Labour Relations Board in September of this year. These decisions will appear in the September/October issue of the OLRB Reports. The full text of recent OLRB decisions is now available on-line through the Canadian Legal Information Institute at www.canlii.org.

Health and Safety – The appellant sought suspension of a series of stop work orders prohibiting it from carrying out any work on a historical property in Stratford – The orders, originally issued in 2002, were the subject of varied and prolonged litigation, including an *ex parte* injunction and contempt proceedings, but were never appealed to the Board at that time – Following a court ruling, the Ministry re-issued the orders and the appellant appealed and sought this suspension – The Board considered the court's decision and found that a suspension would not assist the appellant since the court stated the injunction would remain in place until the Board disposed of the appeal – Suspension denied – Appeal to be set down for hearing

1353837 ONTARIO INC./LAWRENCE RYAN; RE PETER MARTIN AND JOHN DENNIS; File Nos. 1227-06-HS; 1228-06-HS; Dated: September 6, 2006; Panel: Peter F. Chauvin (9 pages)

Interim Order – Health and Safety – During the course of these union appeals of the refusal of an inspector to issue orders relating to staffing at the jail, the union sought an interim order, effectively asking that the employer comply with a directive it had promulgated with respect to the issue in dispute – The Board, after consulting with the parties, held that this was an appropriate instance in which to exercise its discretion to issue an interim order – Order granted

CENTRAL NORTH CORRECTIONAL CENTRE; RE OPSEU AND INSPECTOR DON BRADFORD; File Nos. 2351-05-HS; 4071-05-HS; Dated September 29, 2006; Panel: Brian McLean (4 pages)

Bargaining Rights – Related Employer – Sale of a Business – Unfair Labour Practice – Five applicant unions sought declarations that the City of Toronto and Toronto Community Housing Corporation ("TCHC") were either a single employer pursuant to s. 1(4) of the Act, or TCHC

was a successor to the City – CUPE Local 416 also complained that the employers had committed an unfair labour practice by attempting to defeat or interfere with the union's bargaining rights – The TCHC subsequently filed an application for a declaration that there had been a sale of a business from the City to TCHC – On February 21, 2002, the Board declared TCHC to be a successor to the City - By "bottom line" decision dated March 3, 2005, the Board dismissed the s. 1(4) applications and the unfair labour practice complaint – The Board provides a detailed history of the evolution of social housing in Toronto, the culmination of which was the creation of the TCHC, an arm's length entity responsible for the governance of public housing (with the City as sole shareholder) – TCHC employees, some of whom previously enjoyed membership in city-wide bargaining units, were now in stand-alone bargaining units separate from other city employees – The unions argued that the change in representation would undermine their bargaining strength, facilitate contracting out, and reduce mobility rights – The Board found that in the five years subsequent to the creation of the TCHC, the City had not been involved in any of the TCHC's labour relations, nor had the Board seen any evidence of contracting out – Despite production of voluminous materials by the City and TCHC, there was no evidence of any anti-union animus – The Board found the creation of the new housing model was based solely on legitimate business considerations, and stated that the purpose of s. 1(4) is to preserve bargaining rights but not any particular bargaining structure – Applications dismissed

CITY OF TORONTO AND TORONTO COMMUNITY HOUSING CORPORATION; RE IBEW, LOCAL 353; UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 46; CARPENTERS AND ALLIED WORKERS LOCAL 27; UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA; TORONTO CIVIC EMPLOYEES' UNION, LOCAL 416; CUPE; OPSEU; File Nos. 2476-01-R; 2721-01-R; 3054-01-R; 3654-01-R Dated September 27, 2006; Panel: Kevin Whitaker, J.A. Ronson, H. Peacock (18 pages)

Certification – Reconsideration – Timeliness – Unfair Labour Practice – The union sought reconsideration of the decision dismissing the application for certification - Although the union indicated on the certification worksheet that it intended to file an unfair labour practice about the employer's conduct, the Board did not receive any representations in the five-day post-vote period provided for in its decision ordering the vote – The Union argued that it had difficulty obtaining timely statements from employees because of the employer's impugned conduct and it filed its s. 96 application as soon as it had gathered those statements (one week after the Board's decision dismissing the certification application) – The Board found that the union had sufficient knowledge of the allegations at the time of the vote or immediately thereafter to make appropriate representations – Request for reconsideration denied – Unfair labour practice complaint continues

THE CORPORATION OF THE COUNTY OF SIMCOE (GEORGIAN MANOR); RE SEIU LOCAL 1.on; File Nos. 0868-06-R; 1156-06-U; Dated: September 26, 2006; Panel: Timothy W. Sargeant, J.A. Rundle, S. McManus (4 pages)

Certification – Construction Industry – Employee – Membership Evidence - Status – The responding party filed a timely response in this application for certification – The employer's primary position was that it had no employees in the bargaining unit because it was not the employer of the persons the applicant had sought to represent; it filed no names on its "Schedule A" – In the alternative, the responding party asserted there were seven more individuals than the four identified in the applicant's materials doing the same work on the application date; at the hearing the responding party sought to add the seven individuals to its "Schedule A" – The Board held that a responding party seeking to assert it is an employer of more individuals than the applicant has proposed must, pursuant to s. 128.1(3), provide the names of those individuals in a timely way, even if its submission relating to those individuals is an alternative position – Employer's motion to file the list of names after the two-day period set out in 128.1(3) dismissed – Matter continues

DESI'S ALUMINIUM CAMBRIDGE; RE CARPENTERS' UNION, CENTRAL ONTARIO REGIONAL COUNCIL, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA; File No. 0351-06-R; Dated: September 12, 2006; Panel: Harry Freedman (6 pages)

Bargaining Rights – Construction Industry – Evidence – Practice and Procedure – Termination – When the IBEW objected to the evidence of employee wishes supplied by the applicant and the Board determined that only photocopies had been filed with the application, the applicant was able to produce the original

document to overcome the objection since there were no other defects in the application materials – The Board held that one copy of the employees' wishes was adequate for multiple applications: it is not necessary for employees signing an expression of their wishes to stipulate the Board Area or sector of the construction industry in which they are working in order to make clear that they do not want to be represented any longer by their bargaining agent – The wording of the document providing evidence of the employees' wishes must be sufficient to show the intention – Matter continues

JLY ELECTRIC LTD.; RE ERNIE PICKARD; IBEW, LOCAL 105; IBEW CONSTRUCTION COUNCIL OF ONTARIO File Nos. 0331-04-R; 0350-04-R; 0472-04-U; 0514-04-R; Dated: September 5, 2006; Panel: Christopher J. Albertyn (5 pages)

Health and Safety – Reconsideration – Timeliness – The applicant sought reconsideration of the Board's decision dismissing its appeal for having filed it beyond the statutory 30-day time limit found in s. 61(1) of the *Occupational Health and Safety Act* – The applicant argued the Board has jurisdiction to "deviate, abridge and extend" the time period set out in the Act if the exercise of discretion relates to procedural requirements – The applicant sought to rely on s. 123 of the *Labour Relations Act, 1995* ("technical irregularity") and s. 4.5 of the *Statutory Powers Procedure Act* ("refusal to process documents") – The Board held that it could not import a provision of the LRA when the OHSA set out a complete code for appeals – Similarly, the Board held that s. 4.5 of the SPPA could not be relied on because the Board had in fact processed the appellant's documents and had dismissed the appeal for having been filed beyond the statutory time limit – Reconsideration denied

LAC DES ILES MINE LTD.; RE USWA; AND INSPECTOR ANDRES JOHANNESSON; File No.1589-06-HS Dated: September 19, 2006; Panel: Harry Freedman (6 pages)

Certification – Practice and Procedure – Two timely displacement applications were filed with the Board on the same day – In the Teamsters' application, the employer disputed the union's estimate of the number of employees in the proposed bargaining unit, and gave notice under s. 8.1 – The Board was unable to determine whether the Teamsters had the requisite 40% membership – A three-way vote was ordered, with the box sealed pending the outcome of the s. 8.1 challenge – Vote ordered

WILLIAM NEILSON LIMITED; RE UFCW; CLAC; File Nos. 1873-06-R; 1857-06-R; Dated: September 25, 2006; Panel: Timothy W. Sargeant, Paul Lemay, R.R. Montague (1 page)

The decisions listed in this bulletin will be included in the publication Ontario Labour Relations Board Reports. Copies of advance drafts of the OLRB Reports are available for reference at the Ontario Workplace Tribunals Library, 7th Floor, 505 University Avenue, Toronto.

Pending Court Proceedings

Case name & Court File No.	Board File No.	Status
Maystar General Contractors Inc. v. The International Union of Painters and Allied Trades, Local Union 1819 Divisional Court No. 481/06	0812-06-R	Pending
Johnson Controls Ltd. v. Brookfield Lepage Divisional Court No. 406/06	1634-04-R	Pending
TTC v. Amalgamated Transit Union Divisional Court No. 261/06	0618-06-U; 0620-06-U	Pending
Abduraham, Abdoulrab v. Novaquest Finishing Divisional Court No. 327/06	2222-04-ES, 2223-04-ES, 2224-04-ES	Pending
C.M.G. Innovation Co. v. Ontario Pipe Trades Council and United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 819 Divisional Court No. 06-DV-1234 OTTAWA	0652-03-R	November 23, 2006
D.M.S. Concrete & General Contracting v. Plasterer's Local 598 (Stated Case) Divisional Court No. 326/06	0330-06-G	November 3, 2006
D.M.S. Concrete & General Contracting v. Plasterer's Local 598 (Stated Case) Divisional Court No. 254/06	4212-05-G; 4213-05-G	November 3, 2006
Place Mont Roc v. United Steelworkers (Stated Case) Divisional Court No. 233/06	1684-05-U; 3719-05-U	Pending
City of Hamilton v. Carpenters, Local 18 Divisional Court No. 209/06	1785-05-R	Pending
Guild Electric Limited et al v. IBEW, Local 1739 Divisional Court No. 202/06	4179-05-U; 4307-05-M	January 10, 2007
Elena, De Monelli Foerster v. Toronto Catholic District School Board (Civil Suit) Divisional Court No. 06-CV-310231PD1	1373-04-U	Oct. 31, 2006
Bricklayers Local 7 v. 921879 Ontario Ltd. et al Divisional Court No. 06-DV-1209 OTTAWA	3261-04-JD; 3504-04-JD	Pending
Gus Nedelkopoulos v. OLRB Divisional Court No. 78978/06 NEWMARKET	1838-05-U 2644-05-U	Pending
Greater Essex County District School Board v. International Brotherhood of Electrical Workers, Local 773 et al Divisional Court No. 126/06	1702-04-R; 3120-04-R; 3172-04-R; 3173-04-R; 3174-04-R	August 15, 2006 (reserved)
Kostantinos Ioannidis v. Amalgamated Transit Union, Local 1572, Corp. of City of Mississauga, Transportation and Works Dept., Transit Division Divisional Court No. DC 0500947400	2287-04-U	August 30, 2006 (motion)
United Brotherhood of Carpenters v. United Brotherhood of Carpenters, Local 93 Divisional Court No. 01/06	2069-05-U; 3055-05-M	Pending
Gus Nedelkopoulos v. OLRB Divisional Court No. 77287/05 NEWMARKET	3704-04-U	Pending
Century Bldg. Restoration Inc. v. Universal Workers Union LIUNA Local 183, et al Divisional Court. No. 76931/05 NEWMARKET	1880-04-G	Pending

Case name & Court File No.	Board File No.	Status
Mississaugas of Scugog Island First Nation v. Great Blue Heron et al Divisional Court No. 10/04	1271-03-U; 1336-03-M; 1414-03-M	Dismissed – May 31, 2006, seeking leave to appeal to C.A.
Grantley Howell v. OLRB Divisional Court No. 04/178 HAMILTON	0933-01-U; 1273-01-U 3552-00-U	Dismissed – April 3, 2006, seeking leave to appeal to C.A.
Scaduto, Frank Divisional Court No. 382/05	1798-03-U; 4338-02-U	Pending
Tuquabo, Dawitt Divisional Court No. 03-DV-000935	2377-02-U	Dismissed Feb. 14/05; leave to appeal dismissed Jun 29/05; seeking leave to S.C.C.